

Indiana Department of Education

Division of Exceptional Learners

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER:	1845.01
COMPLAINT INVESTIGATOR:	Brian Simkins
DATE OF COMPLAINT:	December 14, 2001
DATE OF REPORT:	February 1, 2002
REQUEST FOR RECONSIDERATION:	yes/Revised February 28, 2002
DATE OF CLOSURE:	June 13, 2002

COMPLAINT ISSUES:

Whether the MSD of Perry Township and RISE Special Services violated:

511 IAC 7-27-4(a)(5) by failing to convene a case conference committee meeting within ten instructional days of enrollment for a student who had been receiving special education services in another state.

511 IAC 7-27-7(a) by failing to implement the student's individualized education program as written.

511 IAC 7-29-1(f) by failing to provide services to a student with a disability who has been suspended for more than ten cumulative instructional days in the current school year.

511 IAC 7-27-3 by failing to have all required participants at the case conference committee meeting when the manifestation determination was conducted.

511 IAC 7-29-2(c) by failing to provide services to a student with a disability who has been expelled.

511 IAC 7-29-5 by failing to convene a case conference committee meeting within ten business days of expelling a student with a disability to develop a plan for a functional behavioral assessment or review and revise an existing behavioral intervention plan.

During the course of the investigation of this complaint, the following additional issues were identified:

511 IAC 7-29-2(b) by failing to follow appropriate change of placement procedures when suspending a student for more than ten (10) consecutive instructional days.

511 IAC 7-27-5(f) by failing to obtain written consent from a parent to implement proposed services in regard to a change of placement .

An extension of time until January 24, 2002, was granted on January 10, 2002, to allow the investigator sufficient time to obtain needed information. The school's holiday break shortly after the complaint was filed delayed the investigator's access to information. A second extension was granted on January 24, 2002, extending the deadline to February 1, 2002. The extension was necessary due to the number and complexity of the issues involved.

FINDINGS OF FACT:

1. The Student is thirteen years old and attends a local middle school (the "School"). The Student is eligible for special education and related services as a student with a learning disability.
2. The Student originally enrolled in a different middle school within the same school corporation and special education district on February 8, 2001. The Student enrolled from an out-of-state private school and did not have an individualized education program ("IEP"). Although the parent asserts that the private school was solely for students with disabilities, the school provided a general curriculum for grades six through twelve, preparing students to obtain a high school diploma. Information from the school indicates it accepted students with LD and ADHD. The parent indicated on the enrollment form that there had been previous special education services, but that the Student was now a Section 504 student. The Student had been eligible for special education as a student with an emotional handicap from pre-school through fifth grade. Since then, the Student has been diagnosed with Attention Deficit Hyperactivity Disorder ("ADHD") and has received accommodations through a Section 504 plan. The Student's last IEP was from 1998. The Student was determined no longer eligible for special education prior to moving to Indiana. Upon enrolling in school in Indiana, the Student was eligible for Section 504 and the School implemented a new Section 504 plan. The Student was expelled from school in April 2001 for the remainder of the 2000-2001 school year. The Student enrolled in a different middle school (hereafter, the "School") within the same district on October 4, 2001.
3. The parent signed a referral for an educational evaluation on July 24, 2001. The Student was evaluated on September 5, 2001, and found eligible for special education as a student with a learning disability at a case conference committee ("CCC") meeting held on September 13, 2001. An IEP was written by the CCC on September 13, 2001, to be effective until May 23, 2002. The Student's schedule was changed to meet the IEP requirements, and a teacher of record ("TOR") was assigned. Included in the IEP is a behavioral intervention plan ("BIP") that addresses the Student's not bringing books and supplies to class, being truant or tardy to class, and not being on task in the classroom. A functional behavior assessment (FBA) was conducted in October 2001, shortly after the Student transferred to the School, but the results were never used to revise the BIP at a CCC meeting. The IEP was implemented as written between September 17 and November 30, 2001, when the Student was present at school. Per the IEP, the Student was provided math instruction in a resource room for forty minutes every day.
4. Between October 4 and November 26, 2001, the Student was suspended from School for twelve cumulative instructional days: October 5, 8, 15, 16, 24, 29, 30, 31, and November 13, 15, 16, and 26, 2001. The tenth cumulative day of suspension occurred on November 15, 2001. The School did not provide any services to the Student on the eleventh and twelfth cumulative days of suspension. Ten business days from the eleventh cumulative day of instruction elapsed on December 4, 2001.
5. On November 30, 2001, the Student was again suspended from School, constituting the thirteenth cumulative day of suspension. This period of suspension has continued since that time, and, to date, the Student has not been permitted to return to school. A CCC was convened on December 4, 2001, to conduct a manifestation determination and review the Student's BIP. All required participants were present at this CCC meeting, including the parent, the parent's advocate, a general education teacher, a school administrator, a special education administrator (designated by the local special education director), the Dean of Boys, and a special education teacher, although the parent and the school agree that parent was not present for part of the meeting. The local special education director's designate acted as the public agency representative. The CCC determined the Student's misconduct was not a manifestation of the Student's disability. On

December 5, 2001, the school sent the parent a letter summarizing the CCC's consideration and determination. The parent did not challenge the determination. Based on the CCC's determination that the Student's misconduct was not a manifestation of the Student's disability, the School was going to recommend that the Student be expelled, and the CCC discussed the option of enrolling the Student in a local alternative program in lieu of expulsion. The parent agreed to visit the alternative program for an orientation meeting to decide its appropriateness for the Student. Although the School reports that the parent did not visit the program, the parent reports she spoke with program staff via telephone on one occasion and visited the program twice. As a result of these contacts, the parent determined the program was not appropriate for the Student. The parent did not enroll the Student in the alternative program.

6. At the time of the complaint investigation report, the School has not formally expelled the Student, nor has it reconvened the CCC to determine what services are to be provided to the Student in the interim. On December 21, 2001, the School's assistant principal and the Student's TOR began mailing the Student's classroom assignments for the Student to complete at home. The Student was not provided with any instruction from a licensed teacher, and the School has provided no other educational services for the Student. Although the School reports it has offered to provide educational services for the Student at the local special education learning center, no CCC has been convened to determine the appropriateness of these services, nor has the parent consented to these services.

CONCLUSIONS:

1. Finding of Fact #2 indicates that, although the Student had received special education services at one time in another state, the Student's eligibility was terminated prior to moving to Indiana. Therefore, the School was not obligated to convene a CCC meeting within ten instructional days of enrollment. No violation of 511 IAC 7-27-4(a)(5) is found.
2. Finding of Fact #3 indicates that the School did implement the Student's IEP as written when the Student was in attendance until the Student's suspension beginning November 30, 2001. No violation of 511 IAC 7-27-7(a) is found.
3. 511 IAC 7-29-1(f) requires the School to provide services to a student with a disability who has been suspended for more than ten cumulative instructional days in a school year. The services provided by the School must enable the Student to progress appropriately in the general education curriculum and to advance appropriately toward achieving IEP goals. Findings of Fact #4 and #5 reflect that the Student experienced his eleventh cumulative day of suspension on November 15, 2001, and was suspended for additional days beginning November 30, 2001. Finding of Fact #6 indicates that the only services provided by the School were not initiated until December 21, 2001, and consisted solely of sending home the Student's homework assignments. The Student received no instruction to enable him to progress in the general education curriculum or to advance his achievement toward IEP goals. 511 IAC 7-17-64 requires instruction as part of special education services. Providing the Student with homework during the period of suspension does not satisfy the requirement to provide services to the Student. A violation of 511 IAC 7-29-1(f) is found with respect to the School's failure to provide services. Further, even if providing homework assignments had been sufficient, Finding of Fact #6 demonstrates that the School failed to take any action to provide services until the 28th day of suspension. A violation of 511 IAC 7-29-1(f) is found with respect to the School's failure to provide appropriate services beginning on the eleventh cumulative day of the suspension.

4. Finding of Fact #5 indicates that all required participants were at the CCC meeting on December 4, 2001, to conduct a manifestation determination. No violation of 511 IAC 7-27-3 is found.
5. Pursuant to 511 IAC 7-29-2(a)(1), a suspension for more than ten consecutive instructional days constitutes an expulsion. An expulsion is considered a change of placement and requires the School to take certain action, including providing services to the Student during the period of expulsion that enable the Student to progress appropriately in the general curriculum and to advance appropriately toward achieving the goals set out in the Student's IEP. The CCC is responsible for determining what services will be provided to the Student in accordance with the criteria set out in 511 IAC 7-29-2(c). Findings of Fact #5 and #6 indicate that the Student was suspended for more than ten consecutive instructional days beginning on November 30, 2001. Although the CCC convened to conduct a manifestation determination on December 4, 2001, the CCC did not make a final decision on the services to be provided to the Student during this period of expulsion. Despite the Student's continued exclusion from School, the School has not reconvened the CCC to determine the services to be provided to the Student during this period of exclusion. Further, the only service provided to the Student during this time was sending homework assignments, which, as detailed in Conclusion #3, does not constitute provision of educational services. Therefore, a violation of 511 IAC 7-29-2(c) is found with respect to the School's failure to provide services to the Student during his exclusion from school. 511 IAC 7-29-2(d) is also implicated in this violation as the School failed to convene a CCC to determine the appropriate services to be provided to the Student during this period.
6. Findings of Fact #4 and #5 indicate that the School convened a CCC meeting on December 4, 2001, to review the Student's BIP. December 4, 2001, was the tenth business day after suspending the Student for more than ten cumulative instructional days. No violation of 511 IAC 7-29-5 is found.
7. Finding of Fact #5 indicates that the Student has been suspended for more than ten consecutive instructional days, thereby constituting a change of placement. The tenth consecutive day of suspension was served on December 13, 2001, and no CCC meeting has been held since then to propose or consider a change of placement. Therefore, a violation of 511 IAC 7-29-2(b) is found with respect to a change of placement.
8. Finding of Fact #6 indicates that the School did not obtain written consent from the parent prior to attempting to provide continuing education at the local special education learning center as a result of the Student's change of placement. Therefore, a violation of 511 IAC 7-27-5(f) is found.

The Department of Education, Division of Special Education requires the following corrective action based on the Findings of Fact and Conclusions listed above.

CORRECTIVE ACTION:

MSD of Perry Township and RISE Special Services shall:

1. Convene a CCC meeting no later than February 13, 2002, to determine appropriate services and placement for the Student. If the Student is expelled, the CCC shall determine the services to be provided during the period of expulsion to ensure that the Student is able to progress appropriately in the general curriculum and to advance appropriately toward achieving the goals set out in the Student's IEP. Regardless of expulsion or return to school, the CCC must also identify the compensatory services to be provided to the Student as the result of the School's failure to provide services subsequent to the tenth cumulative day of suspension in mid-November and the failure to provide services since November 30, 2001.

The CCC Report/IEP shall clearly describe the compensatory services to be provided to the Student. A copy of the CCC Report/IEP shall be submitted to the Division no later than February 18, 2002.

2. Send a written reminder to appropriate staff that:
 - a. when a student is suspended for more than ten cumulative instructional days, the principal and the student's special education teacher are to determine the services to be provided to the student during additional periods of suspension to ensure that such services are provided to the student; and
 - b. when a student is expelled (including suspensions for more than ten consecutive instructional days), the CCC must convene to determine the services to be provided to the student to ensure the student is able to:
 - i. progress appropriately in the general curriculum, and
 - ii. advance appropriately toward achieving the goals set out in the student's IEP.
- A copy of the written memorandum and a list of all individuals to whom the memorandum was sent shall be submitted to the Division no later than February 18, 2002.